



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2012**

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**ON THE FOLLOWING MEASURE:**

**H.B. NO. 2469, RELATING TO SEX OFFENDER REGISTRATION.**

**BEFORE THE:**

**HOUSE COMMITTEE ON JUDICIARY**

**DATE:** Thursday, February 9, 2012

**TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Lance M. Goto, Deputy Attorney General

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Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General (The "Department") strongly supports this bill.

The purpose of this bill is to update chapter 846E, Hawaii Revised Statutes (HRS), to clarify its provisions and address issues that have arisen in the implementation of the sex offender registration law by: (1) adding comparable foreign convictions and tribal convictions to covered offenses; (2) making offenders who are subject to sex offender registration or notification in their jurisdiction of conviction, covered offenders under Hawaii law; (3) making the law clear that a covered offender must register and report the offender's permanent residence, current temporary residence, or, if an address is not available, a description of the place or area in which the covered offender resides; (4) amending the definition of "conviction" in section 846E-1 to clarify that a conviction, for purposes of sex offender registration, occurs on the date judgment is entered; (5) creating a tier classification for any covered sexual offenses that are not included within the current tier classification law; (6) addressing the problem of covered offenders who do not have registered residences to which the post office can deliver mail, and therefore cannot receive the 90-day verification mailings, by requiring these offenders to report to the chief of police once per month; (7) creating a new offense for those covered offenders who are required to and fail to report once per month; (8) correcting an inconsistency in the law regarding the offense of failure to return the periodic verification of registration information; and (9) repealing the definitions of "mental abnormality," "personality disorder," and "predatory," which are no longer used in the chapter.

In section 846E-1, HRS, the definitions of "crime against minor" and "sexual offense," which establish the covered offenses for registration, are being amended to include comparable foreign convictions and tribal convictions to comply with the federal requirements of the Sex Offender Registration and Notification Act (SORNA), title I of the Adam Walsh Child Protection and Safety Act of 2006. Pursuant to SORNA guidelines, a definition of "foreign conviction" has also been added to the section. A definition for "out-of-state conviction" was added for clarification.

The definition of "sexual offense" is also being amended to include any convictions for offenses from other jurisdictions that subjected the offender to sex offender registration or notification in the jurisdiction of conviction. The amendment will make offenders who are subject to sex offender registration or notification in their jurisdiction of conviction, covered offenders under Hawaii law. In evaluating offenders with convictions from other jurisdictions, it is sometimes difficult to determine whether, and how, Hawaii registration requirements apply. Some offenses from other jurisdictions are very different from Hawaii law. This bill will facilitate the process, and make it clearer for everyone, that if the laws in the jurisdiction of conviction required the offender to register, then upon moving to Hawaii, the offender must also register in Hawaii. To conform to this change in the law, section 846E-2(b), HRS, is being repealed. Subsection (b) requires offenders from other jurisdictions, who were subject to registration or public notification requirements in the other jurisdiction, to register in Hawaii until it was established that the out-of-state conviction was not a covered offense under chapter 846E.

Section 846E-2(a), HRS, is being amended to clarify the basic registration requirement, and make clear that covered offenders, whether or not residents of this State, who remain in the State for more than ten days or for an aggregate period exceeding thirty days in one calendar year, must register with the Department. This requirement is consistent with section 846E-2(g), which sets out the requirement to register with the chief of police.

Section 846E-2(d)(2), HRS, is being amended to clarify the registration information required of a covered offender regarding the place of residence. The law currently requires an offender to report:

The actual address and telephone number of the covered offender's residence or any current temporary address where the covered offender resides, or if an address is not available, a description of the place or area in which the covered offender resides for at least thirty nonconsecutive days within a sixty-day period, and for each address or place where the covered offender resides, how long the covered offender has resided there[.]

"Residence" and "temporary address where the covered offender resides" are not defined. This bill amends the terms to "permanent residence" and "temporary residence," and provides definitions for both terms. With these amendments, covered offenders will be required to register permanent residences, temporary residences, or if an address is not available, a description of the place that the offender resides.

The two new terms, "permanent residence" and "temporary residence," are also important because this bill is amending section 846E-5, HRS. That section sets out the requirements for the periodic verification of registration information. The section currently requires the Department, every ninety days, to mail out a verification form to the last reported address of the covered offender, and requires the offender to complete the form and return it. The section does not address the problem of offenders who only have temporary addresses, or have no addresses, and cannot receive any mail. The law is not clear as to how these offenders are to provide periodic verification of their registration information.

With the proposed amendments to section 846E-5, offenders who register permanent residence addresses to which mail can be delivered, or a permanent residence with a post office box, will be subject to the ninety-day mail verification provisions. Offenders who register temporary residence addresses, a description of a place with no mail address, no place of residence, or a permanent address to which the United States Postal Service will not deliver mail, will be required to report once per month to any police station to verify the offender's registration information.

Section 846E-6(a), HRS, is being amended by deleting the provisions that require a covered offender to report to any police station by the last day of every month when the offender is absent from the offender's residence for ten or more days and fails to establish a new residence within that ten day period. These provisions are unnecessary as this circumstance is covered by section 846E-5(b).

Section 846E-9(a), HRS, sets out the offenses for failing to comply with covered offender registration requirements. This section is being amended to create a new offense for those covered offenders who register a temporary address or no address and fail to report once per month to a police station to verify the registration information.

This bill amends the definition of "conviction" in section 846E-1, HRS, to clarify that "conviction," for purposes of sex offender registration, occurs on the date judgment is entered. The various jurisdictions in Hawaii have inconsistently interpreted the law regarding the point in time in the criminal justice process when the registration requirement begins. While some start the registration process after plea, others wait until sentencing has been completed. This amendment will create uniformity in the application of registration requirements.

To be consistent with the amendment to the definition of "conviction," section 846E-4(a), HRS, is also being amended to provide that the court's responsibility, to advise a covered offender of the registration requirements and to start the registration process, begins after sentencing and the entry of a judgment of conviction. The current law requires the court to take action after "a guilty verdict or a plea of guilty or nolo contendere."

Section 846E-10(d), HRS, is being amended to create a residual category in the tier 1 classification, to categorize any covered sexual offenses that are not clearly included within the current tier classification law. Some offenses, especially those from other jurisdictions, can be difficult to classify in a tier. This amendment addresses that concern.

This bill repeals paragraph (4) from section 846E-5, HRS. That paragraph refers to a violation of the chapter if the covered offender fails to mail the periodic verification form to the Department within ten days after receipt of the form, "unless the covered offender proves that the covered offender has not changed the residence address." This provision is confusing and unnecessary because section 846E-9 sets out the offenses for failure to comply with registration requirements; and section 846E-9(11) sets out the offense for failure to return the periodic verification form within ten days, and provides an affirmative defense that the form was mailed out when the offender was absent from the offender's registered address and had notified the Department of the offender's absence. Thus, paragraph (4) from section 846E-5 conflicts with section 846E-9 and appears to attempt to create a defense that does not make sense. If the

covered offender has not changed the offender's address and has received the verification form, the offender must return the form, and failure to do so should be an offense.

Section 846E-1, HRS, is also being amended to repeal the definitions of "mental abnormality," "personality disorder," and "predatory" which are no longer needed. These terms were necessary for a section of chapter 846E that has already been repealed.

We respectfully request that the committee pass this bill.

**Testimony of the Office of the Public Defender  
State of Hawaii  
to the House Committee on Judiciary**

February 9, 2012

H.B. No. 2469:       RELATING TO SEX OFFENDER REGISTRATION

Chair Keith-Agaran and Members of the Committee:

We oppose or have concerns with a number of provisions in H.B. No. 2469. Several of the proposed amendments to the Sex Offender Registration Law, H.R.S. Chapter 846E appear to be aimed at offenders who suffer from homelessness. We believe that the bill unfairly treats homeless offenders and will lead to violations of the law which are completely unintended.

Foreign convictions

We are concerned that the standard for including foreign convictions as offenses for which one must register is too vague for enforcement and is likely to lead to confusion. The central question is how will the local court determine when an independent judiciary in the foreign country has “generally or vigorously enforced the right to a fair trial” as required by this bill? The fact that the State Department publishes a report on Human Rights Practices would not appear to directly correlate to whether a particular person was fairly adjudicated. With respect to convictions from other states, any court in the United States can be assured that every defendant was adjudicated under the Constitution of the United States.

Registration of visitors

Section 4 on page 7 of the bill would require the registration of a covered offender who remains in the state for more than 10 days or for an aggregate period exceeding 30 days in a calendar year. Currently, the law requires registration only for covered offenders who establish or maintain a residence in Hawaii. We fear that this change would lead to many unintentional violations of the law. If offenders have paid their dues to society, they are entitled to travel like any other citizen. Ten days or two weeks is not sufficient time to get familiarized with a state’s laws and effect registration. The current requirement is sufficient for efficient operation of the offender registry.

Verification of information for temporary residents or homeless persons

In Section 6 of the bill on pp. 20 and 21, the proposed requirement is to have offenders who have designated a temporary residence or no residence report monthly to the police department or other agency designated by the attorney general. We believe that a person who is in transitional housing or is homeless should be required to report every ninety days as is the case with any other offender who has a permanent home. A person should not be penalized with more frequent reporting by virtue of being homeless.

Deletion of ten day grace period when a person loses his/her residence

In Section 7 of the bill on p. 22, the current ten day period after which an offender is deemed to have changed her/her residence is deleted. This change will also result in unintended violations

of the law. With this change, an offender will be obligated to notify the attorney general in writing within three days of changing his/her residence which includes the situation where an offender loses his/her residence. When a person loses a residence, there are many issues to deal with, including finding a new place to go, storing personal items, dealing with children, etc. Currently, there is a ten day grace period with regard to the registration requirements to deal with the changes. This bill would dispense with that grace period.

Thank for the opportunity to comment on this measure.

**House Bill 2469**  
Comments -- Recommendation  
House Judiciary Committee  
Thursday, February 9, 2012

Aloha Members of the House Judiciary Committee,

I am here today to call to your attention a serious flaw in the language found in Section 1 of this bill, where it reads:

"Foreign conviction" means a conviction under the laws of:

"(2) Any other foreign country, if the United States Department of State, in its Country Reports on Human Rights Practices, has concluded that an independent judiciary generally or vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred."

In Black's Law Dictionary the terms "generally" is defined this way:

**"Generally** – 1. Popularly; widely: 2. (a) As a rule; usually: (b) For the most part: 3. Without reference to a particular instance or details; not specifically

The words "generally" "usually" or "for the most part" mean not always. If this bill passes in its current form it will mean that the State of Hawaii will punish persons convicted of child abuse in a foreign country even if that country cannot be relied upon to **always** uphold our citizen's right to a "fair trial". In Hawaii we insist that an accused shall always receive due process and a fair hearing regardless of the offense, before we punish them if found guilty. Are we willing to set into law a policy that we in the state of Hawaii will punish our citizens who are convicted in foreign countries even if they don't always receive a fair hearing and due process of law?

Why would we allow a foreign country to use a lesser standard when it comes to judging the guilt of our citizens then we require in our own country?

What I urge you to do is to strike out the words "generally or" in section 1 subsection (2) so it will read:

"Foreign conviction" means a conviction under the laws of:

"(2) Any other foreign country, if the United States Department of State, in its Country Reports on Human Rights Practices, has concluded that an independent judiciary vigorously enforced the right to a fair trial in that country during the year in which the conviction occurred."

Thank you for your time and attention to this important matter.

Regards,



Leon R. Rouse